

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO REGULATORY TAKINGS AND  
5 REAL PROPERTY; PROVIDING FOR A GOVERNMENT TAKING IF RESULTING IN A DIMINUTION OF  
6 VALUE; PROVIDING EXEMPTIONS; PROVIDING GOVERNMENT ENTITIES WITH THE BURDEN TO  
7 PROVE AN EXEMPTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
8 DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 NEW SECTION. **Section 1. Real property -- regulatory takings.** (1) Except as provided in  
13 subsection (3), if the existing rights to possess, use, modify, develop, sell, or otherwise freely transfer real  
14 property are affected by any action of a government entity and that action results in taking or damaging the  
15 property by diminishing its fair market value by at least 25%, the owner of that property is entitled to just  
16 compensation from the government entity responsible for the action.

17 (2) An action that diminishes the fair market value of real property by at least 25% constitutes a  
18 presumption and prima facie evidence of a regulatory taking compensable under Article II, section 29, of the  
19 Montana constitution.

20 (3) This section does not limit a government entity's ability to waive or issue variances from the  
21 government entity's action as applied to the affected property. A government entity that chooses not to take  
22 action that would result in taking or damaging private real property is not liable for paying compensation under  
23 this section.

24 (4) The following government actions are exempt from the requirements of subsection (1):

25 (a) actions of a government entity that:

26 (i) were taken before [the effective date of this act];

27 (ii) limit or prohibit the use of real property previously recognized as a private or public nuisance;

28 (iii) are required by federal law;

- 1 (iv) establish locations for utility facilities; and
- 2 (v) are taken in response to a real and substantial threat to public health and safety that:
- 3 (A) can be verified to address the real and substantial threat; and
- 4 (B) do not impose a greater burden than is necessary to address the real and substantial threat.
- 5 (b) a government entity's formal exercise of eminent domain against real property only;
- 6 (c) a proposed seizure of property by law enforcement officials as evidence or under a state
- 7 forfeiture statute or a proposed forfeiture of property during or as a result of criminal proceedings;
- 8 (d) the repeal of an action of a government entity; and
- 9 (e) actions taken through the citizen-initiated zoning process.
- 10 (5) The government entity responsible for the action has the burden of demonstrating that the
- 11 action is exempt pursuant to the provisions of subsection (4).
- 12 (6) In order to be protected under subsection (1), the real property must be owned by the claimant
- 13 at the time of the government action for which a taking is being claimed. In the case of a business interest, the
- 14 business must have been authorized by law and must have been the owner or holder of the private real
- 15 property at the time of the government action for which a regulatory taking is being claimed.

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17 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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19 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an

20 integral part of Title 70, and the provisions of Title 70 apply to [section 1].

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22 NEW SECTION. Section 4. Applicability. [This act] applies to government actions involving

23 regulatory takings related to real property that are initiated on or after [the effective date of this act].

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